

APPENDIX 11 – ADMINISTRATION OF THE SCENIC ROAD ACT

Town of Framingham By-Laws, Article VI. “Roads, Highway, Bridges, Rubbish Disposal, Water and Sewer” Section 10 Administration of the Scenic Road Act

[Adopted: Article 20, Special Town Meeting of November 19, 2002]

[APPROVED BY ATTORNEY GENERAL, JANUARY 27, 2003]

Section 10. Administration of the Scenic Road Act

10.1 Purpose

The purpose of this Bylaw is to protect the scenic quality and character of Town roads designated as Scenic Roads by establishing rules and regulations governing local administration of the Scenic Road Act, M.G.L. Ch. 40, s. 15C. The local authority and jurisdiction of the Planning Board, herein, shall be consistent with the Scenic Road Act. The Scenic Road Act governs the cutting or removal of trees, or the tearing down or destruction of stone walls during the repair, maintenance, reconstruction, or paving of roads that have been designated as a scenic road by a city or town. The Town has adopted these regulations with the following objectives:

- a. To maintain the natural beauty and scenic qualities along scenic roads in the Town of Framingham.
- b. To enhance the rural character of scenic roads of the Town and encourage compatibility with existing roadside features.
- c. To implement more fully the provisions of the Scenic Road Act, M.G.L. Ch. 40, s. 15C.

10.2 Statutory Provisions of the Scenic Road Act

“Upon recommendation or request of the Planning Board, Conservation Commission, or Historical Commission of any city or town, such city or town may designate any road in said city or town, other than a numbered route or state highway, as a scenic road.

After a road has been designated as a scenic road, any repair, maintenance, reconstruction, or paving work done with respect thereto shall not involve or include the cutting or removal of trees, or the tearing down or destruction of stone walls, or portions thereof, except with prior written consent of the Planning Board, or if there is not planning board, the Selectmen of the town, or the city council of a city, after a public hearing duly advertised twice in a newspaper of general circulation in the area, as to time, date, place and purpose, the last publication to occur at least seven days prior to such hearing; provided, however, that when a public hearing must be held under the provisions of this section and under section three of Chapter eighty-seven prior to the cutting or removal of a tree, such hearings shall be consolidated into a single public hearing before the Tree Warden and the Planning Board, or if there is no planning board, the selectmen of a town, or the city council of a city, and notice of such consolidated public hearing shall be given by the Tree Warden or his deputy as provided in said section three of Chapter eighty-seven.”

10.3 Procedure to Designate a Road as a Scenic Road

The Planning Board, the Board of Selectmen, the Conservation Commission, the Historical Commission, the Historic District Commission or the citizens of the Town of Framingham by petition (consistent with petition requirements to place an article on the warrant) may propose “scenic road” status for any road in the Town of Framingham, other than a numbered route or state highway.

The Planning Board shall hold a Public Hearing on the proposal or petition, notifying the Selectmen, the Tree Warden, the Superintendent of Streets, the Conservation Commission, the Historical Commission and the Historic District Commission and shall advertise the hearing twice in a newspaper of general circulation; the first advertisement at least fourteen days prior to the date of the public hearing and the last publication to occur at least seven days prior to the date of such hearing. The Planning Board shall make a recommendation to Town Meeting on the merits of the proposed road as a scenic road.

A majority vote of Town Meeting is required for designation of a road as a scenic road. Such designation shall be effective as of the date of Town Meeting action. Any work on any portion of the right-of-way of a scenic road, which

was not physically commenced at the time the road was designated by Town Meeting as a scenic road, shall conform to these regulations.

10.4 Roads Subject to the Provisions of the Scenic Road Act

A list of Scenic Roads of the Town of Framingham follows. Streets designated by Town Meeting include the streets in their entirety unless designated otherwise. This list may be subject to revisions or additions from time to time via Town Meeting action. Scenic Roads are regulated by M.G.L. Ch. 40, s. 15C, and M.G.L. Ch. 87, s. 3.

10.4.1 Roads designated by Article 83 of the April 17, 1974 Annual Town Meeting are as follows:

Belknap Road (Pleasant St. to 300 ft. West of Grove St. and from about 850 ft. East of Grove St. to Edgell Rd)

Bethany Road (Winthrop Street to Ashland Line)

Central Street (Edgell Road to Concord Street)

Dennison Avenue

Edmands Road

Grove Street

Hemenway Road

Lake Road

Lakeview Road

Mill Street

Millwood Street

Nixon Road

Parker Road

Prindiville Avenue

Salem End Road (Winter Street to Ashland Line)

Singletary Lane

Warren Road

Winter Street (Salem End Road to Fountain Street)

10.4.2 Roads designated by Article 15 of the November 12, 1974 Special Town Meeting are as follows:

Auburn Street

Auburn Street Extension

Barber Road

Edgell Road

Fenwick Street

Kellogg Street

Main Street

Mansfield Street

Maple Street

Merchant Road

Parmenter Road

Pond Street

Prospect Street

State Street

Wayside Inn Road

Winch Street

10.5 Definitions

In the absence of contrary meaning established through legislation or judicial action pursuant to MGL Chapter 40, Section 15C, these terms contained in that statute shall be construed as follows:

10.5.1 “Cutting or removal of trees” shall mean the removal of one or more trees, trimming of major branches or cutting of roots. “Cutting or removal of trees” shall not be construed to include clearing of nuisance growth, routine or emergency tree maintenance which removes only permanently diseased or damaged limbs, trunks or roots and dead whole trees or thinning out of overcrowded trees as determined by the Tree Warden. “Cutting or removal of trees” shall include such cutting, trimming or removal as a primary activity, as well as such cutting, trimming or removal done in contemplation of, or following, repair, maintenance, reconstruction or paving work for a road or driveway or sidewalk.

10.5.2 “Repair, maintenance, reconstruction, or paving work” shall mean any work done within the right of way by any person or agency, public or private. Construction of new driveways or alterations of existing ones is also included to the extent such work takes place within the right-of-way. Roadside clearing of trees to provide for vehicle clearance or for improvement to line-of-sight shall also be included in this definition.

10.5.3 “Road” shall mean the entire right of way including, but not limited to, a vehicular traveled way plus its necessary appurtenances within the right-of-way including bridge structures, drainage systems, retaining walls, traffic control devices, pedestrian facilities and the air space above them, but not intersecting streets or

driveways. When the boundary of the right-of-way is an issue so that a dispute arises as to whether or not certain trees or stone walls or portions thereof are within or outside of the right-of-way, the trees and stone walls shall be presumed to be within the right of way until the contrary is shown.

10.5.4 “Stone walls” shall not be construed to include assemblages of stone involving less than one cubic foot of wall material per linear foot nor totaling less than five feet in length. All stone walls within the entire right-of-way of a scenic road or on the boundaries thereof shall be subject to these regulations. If for whatever reason, it is uncertain whether the stone wall is within such right-of-way of the scenic road, it shall be taken to be within the right-of-way and within the coverage of these rules and regulations until the contrary is shown.

10.5.5 “Tearing down or destruction of stone walls” shall include both temporary and permanent removal. Temporary removal of limited portions of stone walls, to be followed by replacement of the disturbed portion of the wall within a reasonable period of time, not to exceed 30 days, at the same location with the same materials and according to the original character, shall be subject to informal filing and review procedures, set forth under subsection 10.9.

10.5.6 “Trees” shall include any living tree (not bushes) whose trunk has a diameter of three inches or larger at one foot above the ground. All trees within the right-of-way of a scenic road or on the boundaries thereof shall be subject to these regulations. If for whatever reason, it is uncertain whether the tree is within the right-of-way of the scenic road, it shall be taken to be within the coverage of these rules and regulations until the contrary is shown.

10.6 Design Standards

10.6.1 Consistency with Town Standards

Street and driveway construction standards shall be consistent with current standards for streets, driveways and curb cuts, as set forth in the Zoning By-Law, the Town Bylaw, and the Subdivision Rules and Regulations, all as amended.

10.6.2 Curb Cuts

Each lot fronting on a scenic road shall generally have one driveway curb cut. The traveled width of a driveway for a single home shall not exceed twelve feet for a single family home or fourteen feet for a common driveway. The use of common driveways is encouraged to preserve and to enhance the visual appearance and rural character of scenic roads in the Town of Framingham.

10.6.3 Stone Wall Removal Limitations

- a) The maximum amount of stone wall to be removed shall be the width of the pavement of the driveway or new road at the location of the stone wall plus three feet on either side.
- b) Unless otherwise waived, removed stone shall be used to repair other sections of the wall within the scenic road, in accordance with the Planning Board approval.
- c) No wall shall be cut without construction of an appropriate terminus.
- d) In no case shall stones be disposed of or used for purposes other than to repair the remaining stone wall within the scenic road without the prior consent of the Planning Board.
- e) Any construction of a terminus or repair of a stone wall shall match the method of the existing construction.

10.6.4 Tree Removal Limitations

- a) No tree with a trunk exceeding 8 inches in diameter, one foot above ground level, shall be cut for a driveway unless the curb cut cannot otherwise be safely located.
- b) No cluster of trees located within 6 feet of each other, with individual trunks exceeding 6 inches in diameter, one foot above ground level, shall be cut for a driveway unless the curb cut cannot otherwise be safely located.
- c) For each tree with a trunk exceeding 6 inches in diameter, one foot above ground level, that is removed, a

tree in a species, size and location, with advice from the Tree Warden and suitable to the Planning Board, shall be planted.

10.6.5 Waivers

The Planning Board may waive the design standards, as set forth under this subsection 10.6 herein, if it finds that the waiver is consistent with the considerations and intent of subsection 10.8. The Planning Board shall consider public safety, sight lines, lot configuration, character of the stone wall and existing vegetation in its deliberation for the granting of a waiver.

10.7 Procedures

10.7.1 Filing

Any person or organization seeking consent of the Planning Board under MGL c. 40, Section 15C, (the Scenic Road Act) regarding the cutting or removal of trees or the temporary (except as provided for under subsection 10.9 herein) or permanent tearing down or destruction of stone walls, or portions thereof, in connection with the repair, maintenance, reconstruction or paving work (as defined in Section 10.5) on scenic roads, shall submit a written request to the Planning Board together with the following:

- a) A plan showing the location and the nature of the proposed action and a description of the proposed changes to trees and stone walls (six copies). At a minimum, such plan shall be to scale (preferred scale is 1" = 40') and shall clearly show existing trees and those to be removed, noting the species and diameter (measured one foot above ground). The plan shall indicate the width, height, character and dimensions of any stone wall, as well as the proposed methods for the repair or reconstruction of any portion of the stone wall.
- b) A statement of the purpose(s) for the changes.
- c) A certified list of abutters to include the owners of all property within 500 feet of the proposed work on the scenic road whose property have frontage on the affected scenic road. The list is to be obtained from the Assessors Office and should reflect their most current records.
- d) Photographs of the existing site showing the area to be affected by work and the surrounding area for a distance of at least 100 feet to either side on the scenic road in question. All photographs must be signed and dated by the applicant.
- e) Any further explanatory material useful to adequately inform the Planning Board prior to the public hearing, or as required by the Planning Board.
- f) Except in the case of Town agencies, the applicable filing fee shall be paid. The applicant shall also bear the cost of hearing notification.

Notice of submittal shall be filed with the Town Clerk and a copy of the submittal transmitted to the Tree Warden and other Town Departments, after the submittal is accepted by the Planning Board as a complete application and it is signed as such by the Planning Board or its staff.

10.7.2 Tree Warden

Planning Board hearings shall be held in conjunction with those held by the Tree Warden acting under MGL c. 87. Consent to an action by the Planning Board shall not be construed as inferring consent by the Tree Warden or the reverse, nor shall execution of this chapter in any way lessen the Tree Warden's duties as allowed, under MGL c. 87.

10.7.3 Notice

- a) The Planning Board shall, as required by statute, give notice of its public hearing by advertising twice in a newspaper of general circulation in the area, the last publication at least 7 days prior to the public hearing. This notice shall contain a statement as to the time, date, place and purpose of the hearing, with a description of the action proposed by the applicant. Copies of this notice shall be sent to the applicant, the Selectmen, the Tree Warden, the Town Engineer, the Department of Public Works, the Conservation

Commission, the Historical Commission, the Historic District Commission and to the property owners on the certified list of abutters as set forth in subsection 10.7.1.c. Notice shall also be posted with the Town Clerk, and at the Planning Board office.

- b) The applicant shall post a Community Notice sign on the property in a conspicuous location at the street frontage at least 7 days prior to the Public Hearing. The sign shall indicate the date, time and location of the Scenic Road Public Hearing before the Planning Board, and the specific nature of the hearing. This sign shall be no less than 2 square feet in size, nor more than 3 square feet in size
- c) In the event that the Planning Board holds a joint hearing with the Tree Warden, acting under MGL c. 87, the advertisement shall be made jointly by the Planning Board and the Tree Warden.

10.7.4 Timing

The Planning Board shall hold a public hearing within 45 days from the date on which the Planning Board's notice of submittal is received by the Town Clerk, unless the applicant agrees, in writing, to an extension of time.

10.7.5 Decision

- a) In rendering its decision, the Planning Board shall consider the application based on compliance with the Scenic Road Act and the considerations set forth in Section 10.8.
- b) The Planning Board may require sufficient bond to be posted to cover the costs of required work within the road right-of-way and to protect existing vegetation and stone walls. Such bonding shall be specified in the Board's decision.
- c) The decision of the Planning Board shall be filed with the Town Clerk within thirty days of the close of the public hearing, unless the applicant agrees, in writing, to an extension of time; copies of which shall be sent to the applicant, the Selectmen, the Tree Warden, the Building Inspector, the Town Engineer, the Department of Public Works, the Conservation Commission, the Historical Commission, the Historic District Commission and those persons who have requested a copy of the decision.
- d) An applicant shall have two years to undertake implementation of a decision of the Planning Board under these regulations, after which time such decision shall be void.

10.8 Considerations

The Planning Board shall consider the following items in rendering a decision with regard to a scenic road application:

- a. Preservation of historic features;
- b. Protection of natural resources and environmental features;
- c. Preservation of scenic and aesthetic characteristics;
- d. Public safety;
- e. Compatibility with surrounding neighborhood;
- f. Compensatory actions proposed, such as replacement of trees and replacement or repair of walls.

10.9 Informal Filing and Review Procedures

10.9.1 Temporary removal of limited portions of a stone wall, to be followed by replacement of the disturbed portion within a reasonable period of time, not to exceed 30 days, at the same location with the same materials and according to the original character, shall be subject to these informal filing and review procedures. Other temporary removal shall not be entitled to these informal filing and review procedures.

10.9.2 The applicant shall submit a cover letter, sketch plan of the work to be done, photographs of the area for a distance of 50 feet on either side of the work site and a statement of the purpose for the temporary removal. Such purposes may include temporary removal for the purposes of utility connections or gaining temporary access, among others.

- 10.9.3** Based upon the information submitted, the Planning Board shall determine if the proposed work is of a limited and temporary nature and may vote to approve the work to be completed without further public process. The Planning Board may require sufficient bond to be posted to ensure restoration of the stone walls.
- 10.9.4** Following completion of the work and replacement of the stone wall in accordance with the Planning Board approval, the applicant shall submit a cover letter to the Planning Board confirming completion together with dated photographs of the restored wall.
- 10.9.5** Violations of an approval under this subsection shall be subject to enforcement under subsection 10.10.

10.10 Enforcement

10.10.1 Filing and Restoration Requirement

Cutting or removal of trees, or the tearing down or destruction of stone walls, or portions thereof, within the layout of a designated scenic road, without prior approval from the Planning Board and in violation of this bylaw will necessitate an immediate filing with the Planning Board, as detailed above, and the area affected shall be subject to restoration of the features, as specified by the Planning Board. This restoration shall consist of replacing/repairing the stone wall as necessary and replacing the trees cut on a square-inch per square-inch basis at locations specified by the Planning Board. A square-inch per square-inch replacement means that the combined area of the replacement trees measured 1 foot above ground level must equal the total area of the original tree trunk as measured 1 foot above ground level.

10.10.2 Compliance

Failure to comply with the duly issued decision of the Planning Board shall be subject to restoration as detailed above and other remedial measures the Planning Board deems necessary, including, but not limited to, the enforcement of the bonding and restoration as detailed above.

10.10.3 Penalty

Cutting or removal of trees or the tearing down or destruction of stone walls within the layout of the scenic road in violation of this Section may be subject to a fine of not more than three hundred dollars (\$300.00), as set forth under the Scenic Road Act, MGL Ch. 40, Sec.15C. Each day that a violation continues shall constitute a separate offense, until a filing in accordance with subsection 10.10.1 has been made, with continued progression toward a good faith effort for restoration.

10.10.4 Enforcement Authority

The Planning Board, the Building Commissioner and the Tree Warden shall have the authority to enforce the provisions of this section, as applicable.